

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CHARLES and JAMIE GIBBS; WILLIAM and
CORIE CONNELLY; GALEN and LESLIE
SATTERLEE; GAIL HENRICHSEN; DUSTIN
and MARTHA BARNETT; DAVE and HOLLY
MARCUS; and KELLY BABB, individually and
on behalf of those similarly situated;

Plaintiffs,

v.

UPONOR CORPORATION, a Finnish
corporation; UPONOR, INC., an Illinois
Corporation; WIRSBO COMPANY, an Illinois
Company; UPONOR WIRSBO COMPANY, an
Illinois company;

Defendants.

) Case No. 12-CV-290-DRH-PMF

) **MEMORANDUM OF LAW IN SUPPORT**
) **OF MOTION OF UPONOR, INC.,**
) **WIRSBO COMPANY, and UPONOR**
) **WIRSBO COMPANY PURSUANT TO 28**
) **U.S.C. § 1404 FOR TRANSFER/CHANGE**
) **OF VENUE**

Defendants UPONOR, INC., UPONOR WIRSBO COMPANY and WIRSBO COMPANY
(solely for purposes of this pleading hereinafter collectively "UPONOR") by and through their
attorneys, Ted L. Perryman, Esq. of the firm of ROBERTS PERRYMAN, for their Motion to
Transfer/Change of Venue pursuant to 28 U.S.C. §1404(a) state as follows:

I. FACTUAL BACKGROUND

A. ALLEGATIONS OF PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT.

Plaintiffs filed their Amended Class Action Complaint ("Complaint") in this Court on May
24, 2012 (Doc. 2.) The named plaintiffs are Charles and Jamie Gibbs, "citizens of the State of
Arizona and owners of a home located at 4107 E. Ravenswood Dr., Gilbert, Arizona" (Doc. 2, par.
13a); William and Corie Connelly, "citizens of the State of Arizona and owners of a home located
at 3459 E. Arianna, Gilbert, Arizona" (Doc. 2, par. 13b); Galen and Leslie Satterlee, "citizens of
the State of Arizona and owners of a home located at 1877 West Macaw Drive, Chandler, Arizona"
(Doc. 2, par. 13c); Gail Henrichsen, a "citizen of the State of Arizona and owner of a home located

1 at 21803 N. Kirkland Drive, Maricopa, Arizona (Doc. 2, par. 13d); Dustin and Martha Barnett,
2 “citizens of the State of Arizona and owners of a home located at 43869 W. Cahill Drive,
3 Maricopa, Arizona” (Doc. 2, par. 13e); Dave and Holly Marcus, “citizens of the State of Arizona
4 and owners of homes located at 16417 South 28th Ave., Phoenix, Arizona and 42174 W. Rummy
5 Road, Maricopa, Arizona” (Doc. 2, par. 13f); and Kelly Babb, a “citizen of the State of Arizona and
6 owner of a home located at 34530 North Haryana Road, San Tan Valley, Arizona” (Doc. 2, par.
7 13g). Each of the named Plaintiffs allegedly own homes in which the plumbing system installed
8 “utilizes the Defendants’ high zinc content yellow brass plumbing components.” (Doc. 2, pars. 13a-
9 g.)

10 Plaintiffs bring their allegations “individually and on behalf of those similarly situated in
11 Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties.”
12 (Doc. 2, par. 1.) The class allegations are made “on behalf of all owners of homes with plumbing
13 systems utilizing high zinc content yellow brass potable water plumbing systems utilizing high zinc
14 content yellow brass potable water plumbing system components manufactured by and/or on behalf
15 of the Uponor entities. . .” (Doc. 2, par. 1.) Plaintiffs allege that Uponor “designed, manufactured,
16 sold and/or distributed their Components . . . throughout Central and Southern Arizona, including,
17 but not limited to, Maricopa, Pinal and Pima Counties.” (Doc. 2, par. 3.) Plaintiffs allege that
18 Uponor made certain warranties with respect to plumbing components and systems, which
19 allegedly “proved untrue when the high zinc content yellow brass Components began to
20 prematurely fail across Central and Southern Arizona, including, but not limited to, Maricopa,
21 Pinal and Pima Counties.” (Doc. 2, par. 6.)

22 The allegations of Plaintiffs’ Complaint particularly single out the impact that conditions
23 within Arizona have in causing their alleged damages. Plaintiffs allege that Uponor held out the use
24 of “high-zinc-content brass that is commonly referred to as ‘yellow brass’ as suitable for use in the
25 potable water plumbing systems of homes throughout Central and Southern Arizona, including, but
26 not limited to, Maricopa, Pinal and Pima Counties. High-zinc-content yellow brass, however, has
27 long been known to suffer from de-alloying corrosion attack known as dezincification, which is an
28

1 injury that happens to the Components when they are exposed to the water in Central and Southern
2 Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties.” (Doc. 2, par. 10.)

3 Similarly, Plaintiffs’ class allegations are Arizona-based. The named Plaintiffs allege they
4 have standing, pursuant to FRCP 23(a), to bring their claims “as representatives of the proposed
5 class of similarly situated owners of homes in the developmental communities in which Plaintiffs’
6 homes are located and homes in Central and Southern Arizona, including, but not limited to,
7 Maricopa, Pinal and Pima Counties, with potable water plumbing systems utilizing the Uponor
8 entities’ high zinc content yellow brass plumbing components. . .” (Doc. 2, par. 14.) Plaintiffs
9 further allege that “All of the owners of homes in the developments set forth in this Complaint and
10 homes in Central and Southern Arizona. . .that contain or contained the Defendants’ Components
11 have been injured as a result of the presence of these defective Components.” (Doc. 2, par. 15.)

12 The putative Plaintiffs’ class consists of: “(1) all owners of homes in Central and Southern
13 Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties with the Defendants’
14 high zinc content yellow brass potable water plumbing Components and (2) owners of homes that
15 paid for repairs or sustained damages as a result of the Defendants’ high zinc content yellow brass
16 potable water plumbing components.” (Doc. 2, par. 22.) Plaintiffs “estimate that their proposed
17 class consists of in excess of one thousand (1,000)” homeowners, all of them located in Central or
18 Southern Arizona. (Doc. 2, par. 23.)

19 The allegations contained in the Plaintiffs’ causes of action are also particular to Arizona.
20 For example, Plaintiffs allege that warranties made by the Defendants were “all designed to
21 promote the introduction and ultimate sale of the defective high zinc content Components in the
22 State of Arizona” (Doc. 2, par. 67.) In fact, Plaintiff’s “Eighth Cause of Action” purports to set
23 forth a claim for “Violation of Arizona Consumer Fraud Act,” alleging that “Defendants, have
24 engaged in deceptive trade practices that are prohibited by Section 44-1522(a) of the Arizona
25 Revised Statutes,” in that “Defendants knowingly made false representations as to the
26 characteristics, materials, standards, ingredients, uses, and benefits of high zinc content yellow
27 brass Components and plumbing systems, but not limited to representing that these materials and
28 systems were defect-free and suitable for residential use in Central and Southern Arizona,” and that

1 “Defendants knowingly failed to disclose material facts in connection with the purchase and sale of
 2 the high zinc content yellow brass Components, “ including that “these materials and systems
 3 would suffer from dezincification corrosion when exposed to water in Central and Southern
 4 Arizona” (Doc. 2, par. 95).

5 Plaintiffs allege that failures of the plumbing systems and components within their Arizona
 6 homes have caused damage to those homes and other property (Doc. 2, pars. 6-9). According to
 7 Plaintiffs’ allegations, some homes have already sustained damage necessitating repairs. Plaintiffs
 8 further allege that all homes within the putative class will likely require repair and/or replacement
 9 of the plumbing systems and/or components within their homes. (Doc. 2, pars. 50-53.) It is
 10 reasonable to assume that all of the repairs performed, or anticipated to be performed, will be
 11 performed within Arizona, and likely by other Arizona persons or entities.

12 In light of the fact that every plaintiff, every home, and every occurrence of actual or
 13 anticipated damage is located in Arizona; and in light of the fact that Plaintiffs have pleaded a
 14 cause of action under an Arizona statute, it is appropriate, and serves the interests of justice and
 15 judicial economy for both the court and the parties, that this matter be transferred to the District of
 16 Arizona.

17 **B. MINNESOTA LITIGATION**

18 Various plaintiffs have also initiated litigation against Uponor in the United States District
 19 Court for the District of Minnesota, involving the same issues alleged in the instant matter. A
 20 lawsuit styled *Tim George, individually and on behalf of all others similarly situated vs. Uponor,*
 21 *Inc. successor to Uponor North America, Inc., Wirsbo Company and Uponor Wirsbo, Inc.,* Court
 22 No. 12-CV-00249 is currently pending in the United States District Court for the District of
 23 Minnesota. A copy of the *George* putative class action complaint is attached hereto as Exhibit “A.”

24 A review of the allegations contained in the *George* complaint reflects that three of the
 25 Defendants named in the instant action—Uponor, Inc., Wirsbo Company and Uponor Wirsbo,
 26 Inc.—are alleged to be Illinois corporations with their principal place of business in Minnesota.
 27 See for example Paragraph 11 of the *George* Complaint, Exhibit “A”. In the *George* Complaint,
 28 allegations with respect to “high zinc content” brass fittings and “dezincification” are set forth, just

as they are alleged in the instant action. See for example, Paragraph 28 of Exhibit “A.” The *George* Complaint seeks certification of a “nationwide class” with respect to issues concerning dezincification of brass fittings that are virtually identical to the allegations in the instant action. See Paragraph 81 of Exhibit “A.”

C. FACTS PERTAINING TO UPONOR

The Defendants named in this lawsuit have also been named as Defendants in multiple litigations pending throughout the United States, including a lawsuit styled *Edwin K. Slaughter et al. v. Uponor Inc. et al.*, filed in Clark County, Nevada 2008. As part of the *Slaughter* litigation, an Affidavit was submitted by the Vice-President–Finance for Uponor, Inc., Bradley J. Beckman. A copy of the Beckman Affidavit is attached hereto as Exhibit “B.” In relevant part, the Beckman Affidavit states that Uponor, Inc., while incorporated in Illinois, maintains its corporate offices and a manufacturing facility in Apple Valley, Minnesota. See Paragraph 3 of Exhibit “B.” Additionally, the Beckman Affidavit reflects that Uponor, Inc.’s business operations are conducted from offices in Apple Valley, Minnesota, that neither Uponor, Inc., nor any of its employees, directly sold the fitting products at issue, and that any monies paid to Uponor, Inc. in connection with the fitting products “would have been received by UPONOR, INC. in Minnesota.” See Paragraphs 10 and 11 of Exhibit “B.”

Although Plaintiffs allege, in Paragraph 21 of the instant Complaint, that venue is proper in the Southern District of Illinois because “All Defendants reside in Illinois, and all Defendants are subject to personal jurisdiction in the Southern District of Illinois because of their systematic, continuous, and substantial general business contacts within the Southern District¹,” there is no allegation whatsoever in Plaintiffs’ Complaint to support or demonstrate any “activity” of the moving Defendants within the State of Illinois; nor is there any allegation that the Plaintiffs have any connection to the State of Illinois. Further, there is no allegation that would lend support to the argument that the State of Illinois has any interest with respect to the issues presented by this case,

¹ Defendant Uponor Corporation (“UC”) strongly disputes that it is resident in Illinois, or that it has any contacts at all within the Southern District, let alone “systematic, continuous, and substantial general business contacts” within the District.

1 as opposed to the State of Arizona, where the Plaintiffs allegedly reside and own property, and
 2 where all of the allegedly defective products and the homes containing them are located; or to the
 3 State of Minnesota, where Uponor, Inc. is physically located and conducts its business operations.

4 As will be discussed further below, given the foregoing factual background, as well as
 5 applicable law concerning the transfer/change of venue of litigation pursuant to §1404(a), Uponor
 6 contends that transfer of this action either to the United States District Court for the District of
 7 Arizona, or to the United States District for the District of Minnesota, where the *George* case is
 8 pending, is appropriate and mandated under applicable law.

9 **II. LEGAL ARGUMENT**

10 **A. APPLICABLE LAW**

11 It is well settled that while motions pursuant to Section 1404 are left to the discretion of the
 12 Court to adjudicate on an “individualized, case-by-case consideration of convenience and fairness,”
 13 there is a specific framework to be used as part of the analysis as to whether transfer is appropriate.
 14 *Stewart v. Ricoh Corporation*, 487 U.S. 22, 108 S.Ct. 2239, 101 L.Ed. 2nd 22 (1988). Thus “a
 15 District Court may transfer a civil action for the convenience of the parties and witnesses [and] in
 16 the interest of justice. . . to any other district or division where it might have been brought.”
 17 *Sanders v. Franklin*, 25 F. Supp. 2nd 855 (N.D. Il. 1998) quoting 28 U.S.C. §1404(a). See also
 18 *Forcillo vs. Lemond Fitness, Inc.*, 220 F.R.D. 550 (S.D. Il. 2004).

19 Pursuant to the §1404(a) analysis, transfer of a case is proper if “(1) venue is proper in both
 20 the transferee and transferor courts; (2) it is for the convenience of the parties or witnesses; and (3)
 21 it is in the interest of justice.” *Forcillo*, citing *Coffey vs. Van Dorn Ironworks*, 796 F.2nd 217 (7th
 22 Cir. 1986).

23 If, pursuant to the foregoing, venue is proper in both the transferee and transferor courts, the
 24 court is to address the second element of the analysis: whether transfer will be for the convenience
 25 of the parties or witnesses. The factors to be considered in assessing the convenience element of
 26 §1404(a) include: “(1) the plaintiff’s choice of forum; (2) the location of the parties and witnesses;
 27 (3) the ease of access to sources of proof ; and (4) the situs of material events.” *Forcillo*, citing *ISI*
 28

1 *International Inc. v. Borden Ladner Gervais, LLP.*, 256 F.3rd 548 (7th Cir. 2001); *Humphries v.*
2 *Coppercrest Leveraged Mortgage Fund, et al.*, 2012 WL 527528 (N.D. IL., 2012).

3 In undertaking the second portion of the §1404(a) transfer analysis, it has been held that a
4 Plaintiff's choice of forum is given less deference when the Plaintiff's choice is not its resident
5 forum. *Piper Aircraft Company v. Reyno*, 454 U.S. 235, 102 S. Ct. 252, 70 L. Ed. 2nd 419 (1981);
6 see also *Forcillo*, supra, *Humphries*, supra, and *Bryant v. ITT Corp.*, 48 F.Supp. 2nd 829 (N.D. IL.
7 1999).

8 The analysis of the location of the parties and witnesses has been held to be the most
9 important in the transfer analysis. *Brandon Apparel Group, Inc. v. Quitman Manufacturing Co.*, 42
10 F. Supp. 2nd 821 (N.D. IL 1999). This aspect of the analysis requires that the Court review the
11 "nature and quality of the witness' testimony with respect to the issues, not just the number of
12 witnesses in each venue." *Vandeveld v. Christoph*, 877 F. Supp. 1160 (N.D. IL. 1995). As part of
13 this analysis, a district court should also consider whether witnesses will be subject to compulsory
14 process, as well as assess the cost to obtain attendance of willing witnesses. *Forcillo*, supra, citing
15 *Hanley v. Omar*, 6 F. Supp. 2nd 770 (N.D. IL. 1998).

16 Additionally, the transfer analysis requires an inquiry into the ease of access to sources of
17 proof, as well as where the "situs" of material events is located. This may require consideration of
18 whether non-party witnesses might be uncooperative in responding to a subpoena from the putative
19 transferor district. *Murphy v. Avon Products, Inc.*, 88 F.Supp. 851, 852-53 (N.D. Ill. 1999).

20 Finally, as part of the foregoing transfer analysis, the court is to assess whether a transfer of
21 the case will "promote the interest of justice." The Court in *Forcillo*, supra, held that this
22 component of the §1404(a) inquiry relates to the "efficient functioning of the courts," rather than
23 the merits of the underlying dispute. See, *Forcillo*, citing to *Coffey*, 796 F. 2nd at 221. The factors
24 considered in connection with this "interest of justice" analysis "include the transferee court's
25 familiarity with applicable law and the congestion of both courts' dockets." See *Forcillo*, supra.

26 As will be discussed further below, application of the facts set forth above to the applicable
27 law cited herein clearly reflects that transfer from the Southern District of Illinois to the United
28

1 States District Court for the District of Arizona, or, alternatively, the United States District Court
2 for the District of Minnesota, is appropriate, and effectuates the intent of §1404(a).

3 **B. ALL OF THE §1404(a) ELEMENTS FAVOR TRANSFER OF THIS**
4 **LITIGATION FROM THE SOUTHERN DISTRICT OF ILLINOIS**

5 **1. Venue Is Appropriate In Either the United States District Court for**
6 **Arizona or the United States District Court for Minnesota**

7 As an initial matter, Uponor has not challenged venue in the present court by way of a Rule
8 12(b)(3) motion. Thus, no issue exists regarding venue in the transferor court. Consequently,
9 Uponor will address venue in the potential transferee courts.

10 With respect to the United States District Court for the District of Arizona, venue would be
11 proper because all of the named Plaintiffs, as well as a putative class of an “estimated 1,000”
12 homeowners, are alleged to be citizens and residents of Arizona. All of the property at issue is
13 located in “Central and Southern Arizona.” Transfer of this litigation to Arizona thus comports
14 with venue considerations.
15

16 With respect to transfer to the United States District Court for the District of Minnesota, it
17 is Uponor’s contention, once again, that, pursuant to §1391, venue is appropriate. The principal
18 place of business of the moving Defendants is Apple Valley, Minnesota. The Affidavit of
19 Uponor’s Vice President-Finance, attached hereto as Exhibit “B”, establishes that, although
20 Uponor, Inc.. is incorporated in Illinois, it maintains its corporate offices and a manufacturing
21 facility in Apple Valley, Minnesota. Uponor conducts its business operations from offices in
22 Minnesota. Any monies purportedly paid to Uponor in connection with the products involved in
23 this litigation were received by Uponor, Inc. in Minnesota. See Exhibit “B”. Plaintiffs allege that
24 the moving Defendants were involved in the design and marketing of the fittings at issue. But any
25 such conduct that Plaintiffs allege as deficient would have initiated in Minnesota, and certainly not
26 in Illinois. In fact, no conduct of *any* party is alleged to have occurred in Illinois.
27
28

1 It is, therefore, Uponor's position that, for purposes of the §1404(a) analysis, venue is
2 proper in both of the potential transferee courts referenced above.

3 **2. Transfer of This Case Is Proper Because It Serves The Convenience of**
4 **The Parties and Witnesses**

5 As discussed above, there are generally four elements recognized as part of the
6 "convenience" analysis of a §1404(a) transfer.

7 The first element, Plaintiffs' choice of forum, does not militate against transfer of this case.
8 The Supreme Court noted in *Piper Aircraft Company v. Reyno*, 454 U.S. 235, 102 S. Ct. 252, 70
9 L.Ed. 2nd 419 (1981) that a plaintiff's choice of forum receives "less deference by the Court when a
10 plaintiff's choice of forum is not the plaintiff's home forum." The case law clearly indicates that, if
11 the plaintiff has chosen, as its forum, a state that is not that of the plaintiff's residence, that choice
12 is accorded less significance in an analysis of the appropriate venue. *Forcillo*, supra, at 220 F.R.D.
13 552, citing *Bryant v. ITT Corp.*, 48 F.Supp. 829, 832. The present Complaint acknowledges that all
14 named Plaintiffs reside in Arizona, that all putative class members reside in Central and Southern
15 Arizona, and that the homes at issue are all located in Arizona.

16
17 So too, although certain of the moving Defendants may be incorporated in the State of
18 Illinois, it is equally apparent that the home jurisdiction of these Defendants is truly located in
19 Minnesota, not Illinois (See Exhibit "B"). The only manifest connection between Illinois and this
20 litigation is the state of incorporation of Defendant Uponor, Inc.

21
22 In both the *Humphries* case, supra, as well as the *Murphy* decision, supra, Arizona plaintiffs
23 who attempted to bring actions in the District Courts in Illinois had their cases transferred back to
24 the District Court of Arizona, in part because of their non-resident status in Illinois. Given the
25 foregoing, the Plaintiffs' choice of forum does not weigh against transfer of this case, and is of no
26 avail to Plaintiffs in connection with the §1404(a) analysis.
27
28

1 The second element, the location of the parties and witnesses, also clearly favors transfer of
2 this matter from the Southern District of Illinois. There is no question, as is apparent from
3 Plaintiffs' Complaint, that not only are all the Plaintiffs (which Plaintiffs estimate could number
4 1,000 or more, should a class be certified) in Arizona, but that necessary witnesses such as
5 plumbers, developers, distributors, and local building and water officials are all in Arizona as well,
6 where they can conveniently and economically produce documents and testify concerning the
7 plaintiff-homeowners' properties where alleged defects are supposedly located,
8

9 With respect to Uponor, its witnesses are generally located in Minnesota. At no point in the
10 history of the overall brass litigation against Uponor have either Plaintiffs' "of counsel" attorneys
11 (several of whom, all from Las Vegas, are of record for Plaintiffs) or Uponor, produced witnesses
12 or parties located in Illinois. As discussed, Plaintiffs have no connection to Illinois; and Uponor's
13 only connection to Illinois is the location of incorporation of Uponor, Inc.
14

15 The issue of compulsory process and the cost of attendance must also be considered. Given
16 the distance between the Southern District of Illinois and either Phoenix, Arizona, or Apple
17 Valley/Minneapolis, Minnesota, it would be extremely difficult for the parties to subject numerous
18 Arizona or Minnesota witnesses to compulsory process, were the case to remain in Illinois. Given
19 the location of the Plaintiffs' homes, should Uponor seek to conduct depositions of representatives
20 of the local building departments of "Maricopa, Pinal and Pinal Count[ies]," the Arizona
21 Department of Water Resources, or the Arizona Department of Water Quality, it is unclear how
22 compulsory process would be achieved with respect to such individuals, or how those witnesses
23 could be compelled to appear at an Illinois trial. Even if compulsory process could be affected upon
24 such non-party witnesses, the cost to obtain attendance of those witnesses would be significant.
25

26 With respect to venue in Minnesota, that location would be more convenient for Uponor's
27 witnesses. It is also where records are maintained by Uponor.
28

1 Should Uponor choose to name Third-Party Defendants in this case, including entities
2 incorporated in, or whose locations of business are solely within the confines of, Arizona, personal
3 jurisdiction issues may arise due to this litigation remaining in the Southern District of Illinois.

4 Consequently, it is Uponor's contention that the analysis related to the location of parties
5 and witnesses supports transfer of this suit from the Southern District of Illinois to either the United
6 States District Court for the District of Arizona or to the United States District Court for the
7 District of Minnesota.

9 The third element of the convenience analysis concerns the ease of access to sources of
10 proof. Once again, given the lack of any presence within the State of Illinois of either the
11 Plaintiffs, their homes, or the moving Defendants, there are literally no sources of proof located in
12 the Southern District of Illinois. The sources of proof are primarily in Arizona or in Apple Valley,
13 Minnesota where Uponor, Inc. has its principal place of business.

15 As Plaintiffs' counsel are aware, it is the normal practice of the parties in litigation
16 involving the plumbing product at issue, to conduct visual inspections of homes. Following such
17 visual inspections, destructive testing is conducted, which involves removal of fittings, sampling
18 local water chemistry, and taking measurements relating to water flow within homes, following
19 which requests are routinely made for depositions of local plumbers, product suppliers, and
20 building officials or water purveyor representatives. All these elements of proof are in Arizona;
21 none of them are in Illinois.

23 Alternatively, Plaintiffs' "of counsel" attorneys have previously, in connection with similar
24 claims, requested depositions and documents from Uponor. These documents and witnesses, to the
25 extent that they are under Uponor's control, are in Minnesota. Simply because Uponor, Inc. is
26 incorporated in Illinois does not mean it has any germane documents or witnesses there. As is
27 apparent from the foregoing discussion, no sources of proof or witnesses related to Plaintiffs'
28

1 claims are located in the Southern District of Illinois, or for that matter the State of Illinois. Thus,
2 transfer of this litigation to the United States District Court for the District of Arizona, or the
3 United States District for the District of Minnesota is favored pursuant to this element of the
4 convenience analysis.

5 The fourth, and final, element of the convenience analysis under §1404(a) relates to the
6 “situs” of material events. Obviously, the Southern District of Illinois in particular, and Illinois in
7 general, was not the “situs” of any event relevant to this litigation. Uponor’s offices and facilities
8 are located in Minnesota, and the homes at issue in this litigation (potentially 1,000 of them) are in
9 Arizona. Consequently, there are no “material events” that have occurred in Illinois, and Plaintiffs
10 have not alleged a single fact reflecting any relevant or actionable activity by the moving
11 Defendants within the Southern District of Illinois, or Illinois in general.

12 In that regard, the facts of this case are substantially the same as those in *Humphries v.*
13 *Coppercrest*, supra. or *Murphy v. Avon Products*, supra, in which Arizona plaintiffs filing actions
14 in Illinois had their cases transferred back to Arizona, where the majority of witnesses and sources
15 of proof in each case were located, and where all the events alleged in the respective pleadings
16 occurred.

17 Given the foregoing, this fourth element of the convenience analysis also weighs in favor of
18 transfer of this litigation to either the District Court for the District of Arizona or the District Court
19 for the District of Minnesota as opposed to the Southern District of Illinois.

20 3. Transfer Of This Litigation Is In the Interest Of Justice

21 As referenced above, the “interest of justice” analysis includes consideration of the
22 transferee court’s familiarity with applicable law. It is apparent from Plaintiffs’ Complaint that the
23 State of Arizona—the location of all of the events alleged, as well as the applicable law for the
24 statutory cause of action alleged—has a far more substantial interest in the outcome of this lawsuit
25
26
27
28

1 than the State of Illinois. From an efficiency and consistency perspective, transfer of this matter
2 from the Southern District of Illinois promotes the interests of justice.

3 Additionally, the *George* case pending in the District of Minnesota, has been assigned to
4 Judge Ann C. Montgomery, who has presided over similar issues regarding brass plumbing fittings
5 manufactured pursuant to a different industry standard than those involved in the present litigation.
6 Judge Montgomery has significant background regarding the facts and the issues presented in the
7 instant suit, and the law applicable to this matter. Minnesota, like Arizona, has a greater interest in
8 the issues presented by this litigation than Illinois, given the location of Uponor, Inc.
9

10 Finally, from the perspective of consistency in rulings and precedent, the 9th Circuit Court
11 of Appeals has already issued a ruling with respect to claims involving brass fittings used in
12 potable water plumbing systems; and the 8th Circuit Court of Appeals, in connection with litigation
13 pending before Judge Montgomery involving a different brass fitting system, has issued rulings as
14 well.
15

16 In light of the foregoing, it is Uponor's position that the third element of the transfer
17 analysis, relating to the interest of justice, weighs heavily in favor of transfer of this litigation from
18 the Southern District of Illinois, and that transfer is therefore appropriate under §1404(a).
19

20 **C. APPROPRIATE TRANSFEREE VENUE**

21 Based upon the facts set forth above and the law concerning the application of §1404(a),
22 Uponor contends that it has established a proper basis for transferring this litigation from the
23 Southern District of Illinois. With respect to the question of the appropriate transferee court, as
24 discussed above, Uponor believes that there are two options: the United States District Court for
25 the District of Arizona, or the United States District Court for the District of Minnesota. The
26 relevant factors favor transfer to either jurisdiction. For Arizona, these include: the location of the
27 named plaintiffs, and purportedly their homes; the location of local witnesses including plumbers,
28

1 developers, local building and water officials; and, federal courts familiar with the particular issues
2 involved in this litigation. Alternatively, the United States District Court in Minnesota has
3 experience with the issues presented by this litigation, is the location of witnesses of the moving
4 Defendants, and is the home jurisdiction of Uponor, Inc. Depositions of Uponor witnesses,
5 conducted by Plaintiffs' "of counsel" attorneys, already have taken place in Minnesota on several
6 prior occasions. In light of the foregoing, Uponor believes that either transferee forum satisfies the
7 criteria of §1404(a).

9 Undertaking a strict analysis of the number, nature and quality of parties, witnesses, and
10 evidence, as well as the number of potential third party witnesses likely to be subject to subpoena
11 or compulsory attendance, Uponor believes the factors favor transfer to the United States District
12 Court for the District of Arizona. Applying the law and the facts discussed above, while Uponor
13 would accept transfer of this litigation to either the United States District Court for the District of
14 Arizona or the United States District Court for the District of Minnesota, Uponor believes the
15 aforementioned analysis ultimately favors transfer of to Arizona, with the most appropriate
16 alternative transfer to the United States District Court for the District of Minnesota.

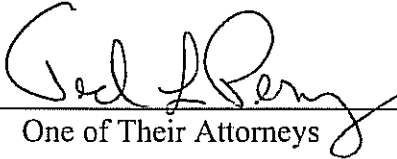
18 **III. CONCLUSION**

19 For the foregoing reasons, Uponor requests that this Court grant its §1404(a) Motion to
20 Transfer/Change of Venue, and Transfer this matter to the United States District Court for the
21 District of Arizona; or, alternatively, transfer this matter to the United States District Court for the
22 District of Minnesota, Judge Ann C. Montgomery presiding.

24 WHEREFORE, Defendants UPONOR, INC., WIRSBO COMPANY and UPONOR
25 WIRSBO COMPANY, pray that this Court will grant their Motion to Transfer/Change of Venue,
26 transfer this litigation either to the United States District Court for the District of Arizona, or the
27
28

1 United States District Court for the District of Minnesota, and grant such other and further relief as
2 the Court may deem appropriate.

3
4
5 UPONOR, INC., WIRSBO COMPANY
6 and UPONOR WIRSBO COMPANY

7
8 By: 
One of Their Attorneys

9 Ted L. Perryman
10 ROBERTS PERRYMAN
11 1034 S. Brentwood Blvd.
12 Suite 2100
13 St. Louis, MO 63117
14 Telephone: 314-421-1850
15 Facsimile: 314-421-4346
16
17
18
19
20
21
22
23
24
25
26
27
28